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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,369

01/30/2006

Oleg Naigertsik

1268-254

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04/19/2010

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EXAMINER

TRAN, THAO T

ART UNIT

PAPER NUMBER

1787

MAIL DATE

DELIVERY MODE

04/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/566,369	Applicant(s) NAIGERTSIK ET AL.	
	Examiner Thao T. Tran	Art Unit 1787	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,9,10,13,15,17,19,22-24 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/5/06; 11/6/06; 11/8/08; 4/23/08; 9/25/08</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,9,10,13,15,17,19,22-24,33,40-43,45,47,48,51,52,56,60-62,73,74,82,83,86,90,92 and 94-97.

Continuation of Disposition of Claims: Claims withdrawn from consideration are 33,40-43,45,47,48,51,52,56,60-62,73,74,82,83,86,90,92 and 94-97.

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DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, species (a) including claims 1, 9-10, 13, 15, 17, 19, 22-24, and 29, in the reply filed on 1/25/2010 is acknowledged. The traversal is on the ground(s) that claim 40 contains the same limitation of "above 95% w/w of said core material" as in claim 1. This is not found persuasive because as pointed out before, claim 40 requires "a weight ratio of the precursors to the core material to be from 5/95 to 25/75" that is not required by claim 1. The traversal with respect to the elected species is on the ground that species (a) and (b) stand in a combination/subcombination relationship. This is not found persuasive because claim 29 is directed to a composition; whereas claim 33 is directed to a suspension substantially free of colloidal silica that would be considered two different inventions.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 33, 40-43, 45, 47, 48, 51-52, 56, 60-62, 73-74, 82-83, 86, 90, 92, 94-97, have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/25/2010.

Claim Objections

3. Claim 9 is objected to because of the following informalities: In claim 9, line 2, "suncscreen" should be changed to --sunscreen--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9-10, 13, 15, 17, 19, 22-24, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lapidot et al. (US 2002/0064541).

Lapidot discloses a composition, comprising microcapsules having a core-shell structure. The core of each microcapsule includes at least one active ingredient and is encapsulated within a microcapsular shell; whereas the shell is comprised of at least one inorganic polymer obtained by a sol-gel (in-situ) process (see abstract).

The active ingredients include antibiotics, anti-fungal agents, anti-inflammatory agents, perfumes, colors, dyes, enzymes, vitamins, or mixture thereof (see claims 1-89). Example 8 shows the active ingredient to be octylmethoxy cinnamate, a sunscreen compound [0264]. Example 7 shows the active ingredient to be azo dye Congo Red, which is a fluorescent dye [0253].

The inorganic polymer is prepared from a sol-gel precursor, such as a metal alkoxide monomer [0131]. Example shows the monomer used to be tetraethoxy silane [0243].

The composition further comprises a carrier [0032].

The amount of the active ingredient material in the core is about 1% to about 95% [0085], touching the end point of the presently claimed range. Overlapping of a range has been

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considered prima facie case of obviousness, because by teaching the touching point, Lapidot directly teaches the presently claimed range.

Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thao T. Tran/
Primary Examiner, Art Unit 1787

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